

*Status: Point in time view as at 16/10/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 50.

#### RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

##### *Preliminary*

- 1 In this Schedule the “period of notice” means the period of notice required by section 49(1) or, as the case may be, section 49(2).

##### *Employments for which there are normal working hours*

- 2 (1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours—
- (a) the employee is ready and willing to work but no work is provided for him by his employer; or
  - (b) the employee is incapable of work because of sickness or injury; or
  - (c) the employee is absent from work in accordance with the terms of his employment relating to holidays.

then the employer shall be liable to pay the employee for the part of normal working hours covered by paragraphs (a), (b) and (c) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a week’s pay by the number of normal working hours.

- (2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice whether by way of sick pay [<sup>F1</sup>statutory sick pay], holiday pay or otherwise, shall go towards meeting the employer’s liability under this paragraph.
- (3) Where notice was given by the employee, the employer’s liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

#### **Textual Amendments**

**F1** Words inserted by [Social Security and Housing Benefits Act 1982 \(c. 24, SIF 113:1\)](#), [Sch. 2 para. 13](#)

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*Employments for which there are no normal working hours*

- 3 (1) If an employee does not have normal working hours under the contract of employment in force in the period of notice the employer shall be liable to pay the employee for each week of the period of notice a sum not less than a week's pay.
- (2) Subject to sub-paragraph (3), the employer's obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.
- (3) Sub-paragraph (2) shall not apply—
- (a) in respect of any period during which the employee is incapable of work because of sickness or injury, or
  - (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,
- and any payment made to an employee by his employer in respect of such a period, whether by way of sick pay [<sup>F2</sup>statutory sick pay], holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.
- (4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

**Textual Amendments**

**F2** Words inserted by [Social Security and Housing Benefits Act 1982 \(c. 24, SIF 113:1\)](#), [Sch. 2 para. 13](#)

*Sickness or industrial injury benefit*

- 4 (1) The following provisions of this paragraph shall have effect where the arrangements in force relating to the employment are such that—
- (a) payments by way of sick pay are made by the employer to employees to whom the arrangements apply, in cases where any such employees are incapable of work because of sickness or injury, and
  - (b) in calculating any payment so made to any such employee an amount representing, or treated as representing, sickness benefit or industrial injury benefit is taken into account, whether by way of deduction or by way of calculating the payment as a supplement to that amount.
- (2) If during any part of the period of notice the employee is incapable of work because of sickness or injury, and—
- (a) one or more payments, by way of sick pay are made to him by the employer in respect of that part of the period of notice, and
  - (b) in calculating any such payment such an amount as is referred to in sub-paragraph (1)(b) is taken into account as therein mentioned,
- then for the purposes of this Schedule the amount so taken into account shall be treated as having been paid by the employer to the employee by way of sick pay in

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respect of that part of that period, and shall go towards meeting the liability of the employer under paragraph 2 or paragraph 3 accordingly.

*Absence on leave granted at request of employee*

- 5 The employer shall not be liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee (including any period of time off taken in accordance with [<sup>F3</sup>section 29, 31 or 31A of this Act or section 168 or 170 of the Trade Union and Labour Relations (Consolidation) Act 1992].

**Textual Amendments**

- F3** Words in [Sch. 3 para. 5](#) substituted (16.10.1992) by virtue of [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(2), 302, [Sch. 2 para.23](#).

*Notice given before a strike*

- 6 No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.  
In this paragraph “strike” has the meaning given by paragraph 24 of Schedule 13.

*Termination of employment during period of notice*

- 7 (1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.
- (2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, no payment shall be due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

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